

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHANIE R. McCOY and U.S. POSTAL SERVICE,
FREEHOLD POST OFFICE, Freehold, NJ

*Docket No. 02-952; Submitted on the Record;
Issued October 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability on June 26 and August 12, 1996 causally related to her July 8, 1988 employment injury.

This case has previously been on appeal before the Board. In a November 28, 2000 decision, the Board affirmed the September 26, 1997 decision of the Office of Workers' Compensation Programs, finding the evidence of record insufficient to establish that appellant sustained a recurrence of disability on June 26 and August 12, 1996 causally related to her July 8, 1988 employment injury. The Board also affirmed the Office's October 14, 1998 decision denying appellant's request for an oral hearing as untimely.¹ The facts and history of the prior appeal are incorporated by reference.

By letter dated December 12, 2000, appellant filed a petition requesting that the Board reconsider its decision. By decision dated April 19, 2001, the Board denied appellant's petition for reconsideration. The Board found that appellant merely reiterated arguments previously of record.

Appellant requested reconsideration before the Office by letters dated February 14, May 11 and September 3, 2001.

In a December 21, 2001 decision, the Office denied modification of its prior decisions. The Office explained that the evidence of record revealed a new injury because appellant identified new independent intervening factors as the cause of her disability and thus, she failed to satisfy the requirements necessary for establishing a recurrence of disability. The Office acknowledged that it could require appellant to file a new Form CA-2, occupational illness claim for the new injury, but it declined to do so to avoid the filing of an additional form. Instead, the

¹ Docket No. 99-123 (issued November 28, 2000).

Office advised her that it would create a new occupational disease claim from her September 13, 1996 recurrence claim form and use June 26, 1996 as the date of injury.

When an employee who is disabled from the job she held is injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.²

In this case, appellant has neither shown a change in the nature and extent of her injury-related condition or a change in the nature and extent of the limited-duty requirements. The record shows that following the July 8, 1988 employment-related temporary aggravation of thoracic outlet syndrome, appellant returned to work in a limited-duty capacity as a general clerk with certain physical restrictions.

In support of her recurrence claim, appellant submitted a December 8, 2000 attending physician's report from Dr. Jayam Krishna Iyer, a Board-certified anesthesiologist, describing her pain in the right shoulder, right arm and neck. Dr. Iyer diagnosed reflex sympathetic dystrophy (RSD). She indicated that appellant's condition was caused or aggravated by her employment by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's disability was related to employment is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.³ Dr. Iyer failed to explain how or why appellant's condition was caused or aggravated by her July 8, 1988 employment injury.

In a December 14, 2000 report, Dr. Iyer indicated that appellant had thoracic outlet syndrome while working for the employing establishment and a history of her medical treatment. She stated that appellant's RSD and severe complex regional pain syndrome Type I were the result of her July 7, 1988 employment injury. Dr. Iyer further stated that appellant was unable to work due to shoulder pain and she could not work in a cold environment, which would aggravate her condition. She incorrectly noted the date of appellant's employment injury. Further, Dr. Iyer failed to provide any medical rationale explaining how or why appellant's disability for work was caused by her employment injury.

Dr. Iyer's January 9, 2001 prescription recommended stellate ganglion blocks for appellant. Her prescription failed to address whether appellant had a condition caused by her July 8, 1988 employment injury.

Dr. Iyer's February 26, 2001 report revealed that appellant had a history of chronic right-upper extremity pain with a diagnosis of RSD and that she had been treating appellant since April 24, 1997. She noted a history of appellant's treatment for this condition, as well as, for her

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

thoracic outlet syndrome. Dr. Iyer also noted findings on physical examination and diagnosed right shoulder strain and chest wall pain with possible complex regional pain syndrome Type-1 that was in remission. She further noted appellant's medical treatment and opined that she was not capable of gainful employment at that point. Dr. Iyer indicated that vocational rehabilitation may be provided and that appellant may be able to sit and answer telephones with her left hand at a desk job. She stated that appellant's pain was unpredictable and that she may be unable to fulfill all of her work duties. Dr. Iyer failed to address whether appellant's disability was caused by her July 8, 1988 employment injury.

In her March 15, 2001 report, Dr. Iyer failed to address whether appellant was disabled due to her July 8, 1988 employment injury. She merely noted appellant's complaints of pain in her neck and right shoulder and right arm. Dr. Iyer further noted her findings on physical examination and diagnosed acute shoulder bursitis and RSD. She ruled out cervical radiculopathy and noted appellant's medical treatment.

A further report of Dr. Iyer is unsupportive of the claim, that appellant's claimed recurrence of disability on June 26 and August 12, 1996 was causally related to the July 8, 1988 employment injury and appears to support a new occupational disease claim. In her January 27, 1999 report, Dr. Iyer indicated that appellant's work assignment caused the pain in her right arm and shoulder. She noted that appellant was susceptible to flares of chronic fibromyalgia and tendinitis of the shoulder when exposed to cool breezes and doing repetitive or assembly-type assignments like sorting mail. Dr. Iyer stated that this was to be avoided by management. She noted appellant's description of how she began to experience pain in her arm and shoulder. Appellant stated that she was given the assignment of making employees timecard badges and vehicle badges for all of the associated offices and branches of the employing establishment. She further stated that her heater was smoking, which caused her to be without a heater and an employee's fan was blowing on her. Dr. Iyer indicated that appellant had a history of recurrent and persistent tendinitis of the shoulder and her limitations, particularly, the avoidance of repetitive right arm movement and prolonged elevation of the right arm. She stated that appellant's keyboard tray or typewrite tray should be set up at low waist level if she was going to do that type of work most of the day. Dr. Iyer opined that appellant's current problem was due to repetitive strain syndrome associated with RSD. She further opined that the original disability and continuation was due to appellant's work. Dr. Iyer concluded that appellant basically suffered from repetitive strain syndrome with pain in her right shoulder, neck and right elbow, which was generally related to her work. She stated that the repetitive strain syndrome was the result of work with tendinitis at the right elbow and that the initial tendinitis was related to repetitive motion at work. She further concluded that various aspects of appellant's current work situation aggravated her condition.⁴ As this evidence supports, appellant's claim is not that she sustained a recurrence of disability as a result of a change in the nature and extent of her injury-related condition. Appellant's claim is that she sustained a new injury in her limited-duty position preventing her from performing her assigned work duties.

⁴ The Board notes that to the extent that Dr. Iyer related appellant's condition to a new onset of disease, this would be relevant to a new occupational disease claim, which is not currently before the Board; *see* Federal (FECA) Procedure Manual, Part 2 -- *Claims, Recurrences*, Chapter 2.1500.3 (January 1995).

As there is insufficient medical evidence in the record to establish that appellant experienced a change in the nature and extent of her employment-related condition, the Office properly denied appellant's claim of recurrence.

Appellant also alleged that she had experienced a change in the nature and extent of her limited-duty requirements. She noted that the employing establishment moved her out of the position of general clerk in the marketing and communications department and reassigned her to a position in the finance department. Appellant argued that the change of position resulted in a change in the limited-duty requirements as this position forced her to perform duties and subjected her to conditions that aggravated her injuries. She did not submit a copy of the description of her new position. Further, appellant failed to provide any evidence that the employing establishment required her to fulfill the duties of the newly assigned position rather than providing her with limited-duty work in this position within her work restrictions. The Board finds that appellant failed to submit sufficient factual evidence to establish a change in her limited-duty requirements.

The Board finds that appellant failed to submit sufficient evidence to establish a change in her employment-related condition and limited-duty requirements. Thus, appellant has failed to establish that she sustained a recurrence of disability.

The December 21, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 15, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member